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**Burrink Commercial Services Inc. and Cement Masons Local 502, AFL-CIO. Case 13-CA-246967**

February 6, 2020

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS KAPLAN AND  
EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Burrink Commercial Services Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Cement Masons Local 502, AFL-CIO (the Union), on August 21, 2019, the General Counsel issued a complaint and notice of hearing on October 25, 2019,<sup>1</sup> against the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On December 9, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on December 11, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 8, 2019,<sup>2</sup> the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 13, 2019,<sup>3</sup> advised the Respondent that unless an answer was received by November 25, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the

complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Indiana corporation, with an office and place of business in Cedar Lake, Indiana, has been engaged in the business of construction, underground utilities, concrete, excavation, and snow removal services in the commercial and residential construction industry.

During the 2018 calendar year, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Brennden Burrink held the position of the Respondent's owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On August 8, 2019, the Respondent, by Brennden Burrink, at the Respondent's job site, physically assaulted picketers lawfully engaged in area standards picketing because employees supported the Union and/or to discourage employees from supporting the Union.

**CONCLUSION OF LAW**

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to post the attached notice at its facility in Cedar Lake, Indiana, and at the jobsite where the assault took place, if the Respondent still maintains a presence there. If the construction project at the jobsite where the assault took place is complete, or if the Respondent has ceased operations at that location, we shall

<sup>1</sup> The General Counsel's Motion for Default Judgment inadvertently stated that the charge was filed on August 22, 2019, and that the complaint was issued on October 24, 2019.

<sup>2</sup> The General Counsel's motion inadvertently listed this date as November 7, 2019.

<sup>3</sup> The General Counsel's motion inadvertently stated that this letter was dated November 18, 2019.

order the Respondent to duplicate and mail notices to all current and former employees employed by the Respondent since the date of the unfair labor practice found herein. See *Zurn/N.E.P.C.O.*, 345 NLRB 12, 20 (2005), rev. denied 243 F. App'x 898 (6th Cir 2007); *Pan American Electric, Inc.*, 328 NLRB 54, 60 (1999).

#### ORDER

The National Labor Relations Board orders that the Respondent, Burrink Commercial Services Inc., Cedar Lake, Indiana, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Physically assaulting picketers lawfully engaged in area standards picketing at the Respondent's jobsite because employees supported the Union and/or to discourage them from supporting the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" at the Respondent's facility in Cedar Lake, Indiana, as well as at the job site where the assault took place, if the Respondent still maintains a presence there.<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, if the construction project at the jobsite where the assault took place is complete, or if the Respondent has ceased operations at that location, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 8, 2019.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 6, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT physically assault picketers lawfully engaged in area standards picketing at our job site because our employees supported the Union and/or to discourage our employees from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

#### BURRINK COMMERCIAL SERVICES INC.

The Board's decision can be found at [www.nlrb.gov/case/13-CA-246967](http://www.nlrb.gov/case/13-CA-246967) or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

